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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

UNITED STATES OF AMERICA,)	No. CR-09-0901 SBA
)	
Plaintiff,)	GOVERNMENT'S SENTENCING
)	MEMORANDUM
v.)	
)	Date: January 11, 2011
DWEN CURRY,)	Time: 9:00 a.m.
)	
Defendant.)	Honorable Sandra Brown Armstrong
)	

Plaintiff United States of America, by and through its counsel of record, Assistant United States Attorney Joshua Hill, hereby submits its sentencing memorandum.

I. Introduction

An Oakland grand jury charged Defendant Dwen Curry in a multi-count indictment with crimes related to a scheme in which Curry pillaged the retirement and other financial accounts of unsuspecting individuals. Curry caused losses approaching one million dollars. He is now scheduled to plead guilty to one count of possession of fifteen or more unauthorized access devices and one count of wire fraud. Accordingly, pursuant to the terms of the proposed plea agreement, the government respectfully requests that Curry be sentenced to 77 months'

1 imprisonment and three years of supervised release, and be ordered to pay a \$200 special
2 assessment and restitution.

3 **II. Guidelines Calculation**

4 The Probation Office concurs with the parties' Sentencing Guidelines calculation set
5 forth in the proposed plea agreement. PSR ¶¶ 25-36. Because defendant falls within criminal
6 history category V (PSR ¶ 44), the resulting Sentencing Guidelines range for total offense level
7 22 is 77 to 96 months' imprisonment. PSR Sentencing Recommendation at 1.

8 **III. Sentencing Argument**

9 **A. Law**

10 As established in *United States v. Booker*, 543 U.S. 220, 220 (2005), the Sentencing
11 Guidelines are no longer mandatory, only advisory. Nonetheless, sentencing proceedings are to
12 begin by determining the applicable Guidelines range. *See United States v. Carty*, 520 F.3d 984,
13 991 (9th Cir. 2008) (en banc). In this sense, the guidelines are "the 'starting point and the initial
14 benchmark,'" *Kimbrough v. United States*, 552 U.S. 85, 108 (2007) (quoting *Gall v. United*
15 *States*, 552 U.S. 38, 49 (2007)), and "are to be kept in mind throughout the process." *Gall*, 552
16 U.S. at 50 n.6. Sentencing courts must consider, in addition to the Guidelines, the factors set
17 forth in 18 U.S.C. § 3553(a). These factors include the need for the sentence to reflect the
18 seriousness of the offense and the history of the defendant, afford adequate deterrence, protect
19 the public from further criminal conduct by the defendant, and avoid sentencing disparities
20 among similarly situated defendants. Because of that, it is "procedural error" if the district court
21 fails to calculate – or calculates incorrectly – the applicable Guidelines range; treats the
22 guidelines as mandatory instead of advisory; fails to consider the § 3553(a) factors; chooses a
23 sentence based on clearly erroneous facts; or fails adequately to explain the sentence selected,
24 including any deviation from the Guidelines range. *See Carty*, 520 F.3d at 993. To determine
25 the substantive reasonableness of a sentence, courts examine "the totality of circumstances." *Id.*
26 If a sentence is within the Guidelines range, "it is probable that it is reasonable." *Rita v. United*
27 *States*, 551 U.S. 338, 351 (2007).

B. Analysis

In raiding the financial safety nets of his many victims, Curry has committed a serious crime that further erodes the public's trust in the security of society's institutions. In imposing a sentence, 18 U.S.C. § 3553(a)(1) instructs the Court to consider the "nature and circumstances of the offense" and the "need for the sentence imposed . . . to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense." Here, the proposed 77-month sentence is a just and reasonable punishment. As the Probation Office recognizes, "for victims of identity theft, the costs can be significant and long-lasting." PSR ¶ 18. This is illustrated by the checklist of reactions provided by victim J.A. in his victim impact statement: anger, anxiety, fear, appetite change, trouble concentrating, and repeated memory of crime. Curry's crimes exhibit a disregard for the privacy and property rights of his fellow citizens.

The Court's punishment should also "afford adequate deterrence to criminal conduct." 18 U.S.C. § 3553(a)(1)(B). Indeed, Curry's numerous encounters with the criminal justice system failed to deter him from committing this offense or engaging in other reckless behavior. The government agrees with the Probation Office's conclusion that Curry's seeming inability to conform his behavior to the requirements of the law makes him "a danger to the community." PSR Sentencing Recommendation at 2. In sum, the 77-month sentence should afford adequate deterrence to future criminal conduct, and also protect the public from the defendant's ongoing criminal behavior. The government's recommended prison sentence of 77 months is reasonable and appropriate under 18 U.S.C. § 3553(a).

C. Restitution

Due to the large amount of potential restitution, and pursuant to 18 U.S.C. § 3664(d), the government requests that the Court set a date for determination of restitution no more than 90 days from the date of sentencing. The government anticipates that the Probation Office and defendant will have no objections to this request.

1 **IV. Conclusion**

2 For the foregoing reasons, taking into consideration the relevant provisions of the
3 Sentencing Guidelines and 18 U.S.C. § 3553(a), the government respectfully requests that the
4 Court sentence defendant to a reasonable and appropriate sentence of 77 months' imprisonment,
5 three years of supervised release and a \$200 special assessment. The amount of restitution to be
6 paid shall be determined at a later date.

7
8 DATED: January 4, 2011

Respectfully submitted,

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10 MELINDA HAAG
United States Attorney

11
12 /S/
13 JOSHUA HILL
Assistant United States Attorney